

Message Text

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INFO OCT-01 ADP-00 EB-11 SSO-00 NSCE-00 INRE-00 USIE-00

CIAE-00 DODE-00 PM-09 H-02 INR-09 NSAE-00 NSC-10

PA-03 RSC-01 PRS-01 SS-14 AF-10 ARA-11 EA-11 EUR-25

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LAB-06 OIC-04 SIL-01 STR-08 TRSE-00 CIEP-02 CEA-02

INT-08 COA-02 CG-00 DOTE-00 /219 R

DRAFTED BY L/ ARA: DAGANTZ: CBF

3/15/73 EXT 22160

APPROVED BY IO/ UNP: MROTHENBERG

IO: MROTHENBERG(DRAFT)

ARA: RAHURWITCH(DRAFT)

L/ UNA: SCNELSON(DRAFT)

EA/ ANZ: JVMARTIN(DRAFT)

EUR: GSSPRINGSTEEN(DRAFT)

EB/ IFD/ OIA: MCKENNEDY(DRAFT)

L: MBFELDMAN(DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA IMMEDIATE

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AMEMBASSY CANBERRA IMMEDIATE

AMEMBASSY VIENNA IMMEDIATE

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C O N F I D E N T I A L STATE 047762

PANAMA FOR USDEL

E. O. 11652: GDS

TAGS: PFOR, UN, PN

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SUBJECT: SECURITY COUNCIL MEETING IN PANAMA - POSSIBLE
RESOLUTION ON PERMANENT SOVEREIGNTY

1. THIS MESSAGE CONTAINS ADDITIONAL LEGAL ARGUMENTATION ON "PERMANENT SOVEREIGNTY OVER NATIONAL RESOURCES" ISSUE WHICH YOU MAY FIND HELPFUL IN OBTAINING COOPERATION OF FRIENDLY DELEGATIONS IN HEADING OFF RESOLUTION ON THIS SUBJECT. WE ARE SENDING THIS MESSAGE TO CAPITALS ALSO, SO THAT EMBASSIES IN THEIR DISCRETION MIGHT WEIGH IN WITH FOREIGN OFFICIALS TO MAKE THEM BETTER AWARE THAT DISCOURAGING SUCH A RESOLUTION WOULD ALSO BE IN THEIR INTEREST.

2. OUR PRINCIPAL REASONS (SOME OF WHICH ARE IN POSITION PAPER FURNISHED TO AMB SCALI) FOR BELIEVING " PERMANENT SOVEREIGNTY" IS INAPPROPRIATE SUBJECT FOR SC RESOLUTION ARE AS FOLLOWS:

(A) ECONOMIC MATTERS OF THIS SORT ARE PROPERLY SUBJECT OF DISCUSSION IN UNCTAD, ECOSOC (WHICH IS CURRENTLY SEIZED OF SUBJECT OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES),

UNGA, BUT NOT IN SC EXCEPT WHERE THERE IS THREAT TO INTERNATIONAL PEACE AND SECURITY;

(B) WE WISH TO AVOID SC ACTION OR DISCUSSION WHICH WOULD EITHER LEAD DIRECTLY TO FURTHER EROSION OF UNGA RESOLUTION 1803, OR REINFORCE RECENT UNCTAD OR UNGA ACTIONS WHICH GO BEYOND RESOLUTION 1803 (UNGA RESOLUTION 3016; RESOLUTION 46 OF UNCTAD III, MAY 18, 1972; OCTOBER 1972 RESOLUTION OF UNCTAD/ TDB, ETC. SEE DISCUSSION PARAS 3, 4, 5 BELOW)

(C) WE BELIEVE IT EXTREMELY IMPORTANT TO PRESERVE RECOGNITION OF APPLICABILITY OF INTERNATIONAL LAW TO DETERMINATION OF COMPENSATION FOR EXPROPRIATED PROPERTY, RESPECT FOR INTERNATIONAL AGREEMENTS ON INVESTMENT, AND RIGHT UNDER INTERNATIONAL LAW TO PURSUE JUDICIAL REMEDIES OUTSIDE THE EXPROPRIATING COUNTRY. MOREOVER, WE WISH TO DISCOURAGE ANY FURTHER REFERENCES TO LEGISLATION (E. G. U. S. LEGISLATION WHICH PROHIBITS AID TO COUNTRIES WHICH EXPROPRIATE PROPERTY OF U. S. NATIONALS WITHOUT APPROPRIATE
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COMPENSATION) AS FORM OF COERCION IN VIOLATION OF OAS

CHARTER OR FRIENDLY RELATIONS DECLARATION.

3. UNGA RESOLUTION 1803 (DECEMBER 14, 1962) CONSTITUTES
BALANCED STATEMENT WHICH ON THE ONE HAND RECOGNIZES RIGHT
OF NATIONS TO PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES,
AND ON OTHER, RECOGNIZES OBLIGATION TO RESPECT FOREIGN
INVESTMENT AGREEMENTS AND TO PROVIDE COMPENSATION FOR
NATIONALIZED PROPERTY IN ACCORDANCE WITH INTERNATIONAL LAW.
RESOLUTION 1803 REJECTS VIEW THAT LOCAL JURISDICTION IS
EXCLUSIVE IN EXPROPRIATION CASES, NOTING TRADITIONAL
REQUIREMENT FOR EXHAUSTION OF LOCAL REMEDIES BEFORE
INTERNATIONAL RESPONSIBILITY ARISES BUT STATING THAT
" UPON AGREEMENT BY SOVEREIGN STATES AND OTHER PARTIES
CONCERNED, SETTLEMENT OF THE DISPUTE SHOULD BE MADE
THROUGH ARBITRATION OR INTERNATIONAL ADJUDICATION."

4. SUBSEQUENT RESOLUTIONS OF UNGA AND UNCTAD HAVE NOT
ALWAYS PRESERVED THIS BALANCED PRESENTATION OF ISSUES.
FOR EXAMPLE, RESOLUTION ON NATIONALIZATION ADOPTED
OCTOBER 1972 BY UN
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*** Current Classification *** CONFIDENTIAL

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